

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

UNITED PHARMACY
2935 Telegraph Avenue
Berkeley, CA 94705

Pharmacy Permit No. PHY 45289

Respondent.

Case No. 3064

OAH No.

DECISION AND ORDER

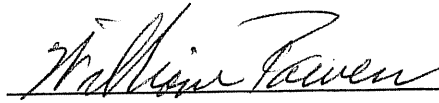
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 11, 2007.

It is so ORDERED June 11, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
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7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 UNITED PHARMACY
2935 Telegraph Avenue
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13 Pharmacy Permit No. PHY 45289

14 Respondent.

Case No. 3064

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**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 In the interest of a prompt and speedy resolution of this matter, consistent with the
17 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer
18 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which
19 will be submitted to the Board for approval and adoption as final disposition of the Accusation.

20
21 PARTIES

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
23 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
24 by Edmund G. Brown Jr., Attorney General of the State of California, by Joshua A. Room,
25 Deputy Attorney General.

26 2. United Pharmacy, Tengiz Iosebashvili, President (Respondent) is
27 representing itself in this proceeding and has chosen not to exercise its right to be represented by
28 counsel.

3. On or about May 18, 2001, the Board of Pharmacy issued Pharmacy Permit Number PHY 45289 to United Pharmacy, Tengiz Iosebashvili, President (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2007, unless renewed.

JURISDICTION

4. Accusation No. 3064 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 28, 2007. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation No. 3064 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the charges and allegations in Accusation No. 3064. Respondent also has carefully read and fully understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at its own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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19. Respondent understands and agrees that if it ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 05.04.07

UNITED PHARMACY
Tengiz Iosebashvili, President
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 5/4/07

EDMUND G. BROWN JR., Attorney General
of the State of California

FRANK H. PACOE
Supervising Deputy Attorney General

JOSHUA A. ROOM
Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 3064

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM, State Bar No. 214663
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15 Pharmacy Permit No. PHY 45289

Respondent.

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A C C U S A T I O N

16 Complainant alleges:

17 PARTIES

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about May 18, 2001, the Board of Pharmacy issued Pharmacy
21 Permit Number PHY 45289 to United Pharmacy, Tengiz Iosebashvili, President (Respondent).
22 The Pharmacy Permit was in full force and effect at all times relevant to the charges brought
23 herein and will expire on May 1, 2007, unless renewed.

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.
28

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within sixty (60) days after its expiration.

STATUTORY PROVISIONS

7. Section 4312 of the Code states, in pertinent part:

“(a) The board may cancel the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer if the licensed premises remain closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may cancel a license after a shorter period of closure. To cancel a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If a written objection is not received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may cancel the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

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“(b) In the event that the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer is cancelled pursuant to subdivision (a) or revoked pursuant to Article 19 (commencing with Section 4300), or a wholesaler, pharmacy, or veterinary food-animal drug retailer notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

• • •

“(e) For the purposes of this section, ‘closed’ means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

...

8. California Code of Regulations, title 16, section 1708.2 provides that any permit holder shall contact the Board prior to transferring or selling any dangerous drugs, devices or hypodermics inventory as a result of termination of business or bankruptcy proceedings and shall follow official instructions given by the Board applicable to the transaction.

9. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but not be limited to, any of the following:

• • •

“(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

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III

1 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
2 request the administrative law judge to direct a licensee found to have committed a violation of
3 the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.
4

5 FACTUAL BACKGROUND

6 11. On or about September 22, 2006, an Inspector for the Board conducted or
7 attempted to conduct a routine inspection of Respondent's premises, and discovered that at that
8 time Respondent was closed to business and was not engaged in the ordinary activity for which
9 the Pharmacy Permit had been issued. Subsequent investigation revealed that Respondent had
10 not been engaged in the ordinary activity for which the Pharmacy Permit had been issued for up
11 to several years, and/or had not engaged in that ordinary activity for at least one (1) day in each
12 calendar week during at least the prior one hundred twenty (120)-day period.

13 12. On or about September 28, 2006, a Notice of Voiding License of Entity
14 Remaining Closed and/or of Discontinuance of Business was personally served on the President
15 of the entity doing business as Respondent, Tengiz Iosebashvili, per section 4312 of the Code.

16 13. On or about October 4, 2006, Mr. Iosebashvili, on behalf of Respondent,
17 submitted a written Objection to the Board to the proceedings for license cancellation.
18

19 FIRST CAUSE FOR DISCIPLINE

20 (Failure to Engage in Ordinary License Activity)

21 14. Respondent is subject to disciplinary action under section 4312(a) and/or
22 4301(o) of the Code, in that during at least one 120-day period prior to September 22, 2006, the
23 pharmacy premises at 2935 Telegraph Avenue, Berkeley, California was not open for business
24 and/or engaged in the ordinary activity for which it was licensed as a pharmacy for at least one
25 (1) day per calendar week, and by so doing violated or attempted to violate the Pharmacy Law.

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